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STATE OF NEW HAMPSHIRE  
DEPARTMENT of NATURAL AND CULTURAL RESOURCES  
DIVISION of PARKS and RECREATION  
BUREAU OF TRAILS

172 Pembroke Road Concord, New Hampshire 03301  
Phone: (603) 271-3254 Fax: (603) 271-3553 E-Mail: nhtrails@dncr.nh.gov  
Web: www.nhtrails.org

April 10, 2020

His Excellency, Governor Christopher T. Sununu  
and the Honorable Executive Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Natural and Cultural Resources, Division of Parks and Recreation, Bureau of Trails (Department), to enter into a Land Use Agreement with Bayroot, LLC (VC #165116), Lyme, NH, in the amount of \$5,400 to be paid in equal annual installments for public recreational use of designated trails, roads, and sites known as "Success Trail" for a 5-year period effective upon Governor and Executive Council approval through December 31, 2023. 100% Other Funds

Funds are available in the following account for Fiscal Years 2020 and 2021, and are anticipated to be available in Fiscal Years 2022, 2023 and 2024, upon the continued appropriation of funds in the future operating budget with authority to adjust encumbrances between fiscal years within the price limitation through the Budget Office, if needed and justified.

03-035-035-351510-35620000, Trail Acquisition

	<u>FY20</u>	<u>FY21</u>	<u>FY22</u>	<u>FY23</u>	<u>FY24</u>
022-500248 - Rents-Leases Other Than State	\$1,080	\$1,080	\$1,080	\$1,080	\$1,080

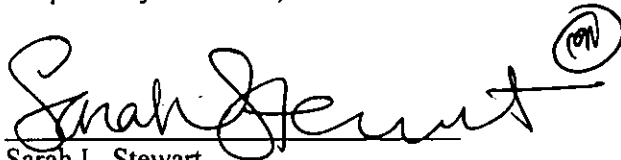
**EXPLANATION**

The Bureau of Trails has held an administrative recreational trail lease on this parcel of land, also known as Success Trail, for over 25 years. Bayroot, LLC (Bayroot) recently acquired this property from another commercial timber corporation and is continuing the administrative lease for the OHRV trails. The State of New Hampshire through the Forest Legacy Program holds a Conservation Easement on this property for its snowmobile trails which is not part of this Land Use Agreement.

This Land Use Agreements is for the administrative time associated with Bayroot's staff working with the Bureau of Trails on trail and property related issues such as maintenance work, trail construction, logging operation coordination, and environmental compliance.

The Attorney General's office has approved this Land Use Agreements as to form, substance and execution.

Respectfully submitted,

  
Sarah L. Stewart  
Commissioner

**LAND USE AGREEMENT**

(Bayroot LLC Lease Agreement No. \_\_\_\_\_)

THIS LAND USE AGREEMENT ("Agreement") is made as of this 24 day of FEBRUARY, 2020, pursuant to authority contained under New Hampshire RSA 215-A (Supp.), by and among,

**Bayroot LLC**, a limited liability company organized under the laws of the State of Delaware, having a principal place of business in the Town of Lyme, County of Grafton, State of New Hampshire, with a mailing address of c/o Wagner Forest Management, Ltd., P.O. Box 160, 150 Orford Road, Lyme, New Hampshire, 03768, its successors and assigns, ("BAYROOT");

**Department of Natural and Cultural Resources of the State of New Hampshire**, acting by and through its Commissioner, and the Chief Supervisor of the Trails Bureau, County of Merrimack, State of New Hampshire, both with a mailing address of State of New Hampshire, Department of Natural and Cultural Resources, Division of Parks and Recreation, Trails Bureau, 172 Pembroke Road, Concord, New Hampshire 03301, ("DNCR"); and

**Department of Natural and Cultural Resources of the State of New Hampshire**, acting by and through its commissioner and the Administrator, Planning & Community Forestry of the Division of Forests and Lands, both with a mailing address of State of New Hampshire, Department of Natural and Cultural Resources, Division of Forests and Lands, Planning & Community Forestry, 172 Pembroke Road, Concord, New Hampshire 03301, ("DNCR").

## RECITALS

WHEREAS, the State of New Hampshire acting by and through DNCR wishes to have BAYROOT grant access to the citizens of New Hampshire and other members of the public to a certain system of off highway recreational vehicle trails described below for recreational purposes;

WHEREAS, BAYROOT is willing to grant such access provided that such access can be granted with statutorily limited liability to BAYROOT, and can be granted at no cost to BAYROOT, and provided that DNCR is willing to establish, maintain and patrol said trails during such times as this Agreement remains in effect;

WHEREAS, DNCR is the Easement Holder under a Conservation Easement on the Premises, conveyed by a Corrective Deed dated December 27, 2018 and recorded in the Coos County Registry of Deeds at Book 1503, Page 833, and said Conservation Easement includes the following provision at Section 5.E.iv: "The Fee Owner and Easement Holder may mutually agree, in writing, to enter into separate agreement(s), referred to as "Public Access Agreement", for Public Off-Highway Recreational Vehicle (OHRV) trail use... over and across the Property. Such agreements shall describe the rights and responsibilities of the parties related to such trails and recreational activities;" and

WHEREAS DNCR has concluded, in its sole discretion, that this Agreement is consistent with the goals and terms of the Conservation Easement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth herein below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, BAYROOT, and DNCR hereby agree as follows:

1. Description:

BAYROOT grants permission to the public, in the manner and subject to the conditions and restrictions stated in this Agreement, over and across certain lands of BAYROOT for the purpose of the location, relocation, establishment, construction, reconstruction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment and restoration of a system of designated trails for Off Highway Recreational Vehicles, including designated bridges/culverts across streams, ("Trail(s)"), along with designated trailhead parking and sanitary facilities at strategic points. For this agreement, the definition of Off Highway Recreational Vehicles includes trail bikes.

2. Description of Property:

The Trails are over and across, and the Facility Sites are located upon, certain lands of BAYROOT purchased from Thomas and Scott Dillon in January 2019 and located in the unincorporated township of Success in the State of New Hampshire, hereinafter referred to as the "Premises". The locations of Trails and of Facility Sites are restricted to the designated trails, roads, and sites as shown on a map dated June 2016 and titled "Success Trail", which map is attached hereto as Exhibit A and made a part hereof. This Agreement shall be subject to the rights of either party hereto to alter, to close, to relocate, to discontinue and/or to establish new designated locations of Trails and of Facility Sites as set forth herein below, provided that any such change is approved in advance and in writing by the State of New Hampshire Division of Forests and Lands (DFL) as holder of the Conservation Easement.

3. Term:

The term of this Agreement shall commence on the date of approval of Governor and Executive Council (replacing the existing lease as of that date) and shall terminate on December 31, 2023. This Agreement shall be subject to the rights of either party hereto to terminate this Agreement as set forth herein below.

4. Payment:

4.1 DNCR shall pay during the term a fee of \$5,400 for the public use of Trails. The payment of the fee shall be made in five (5) annual fee installments of \$1,080 (for each of 2019, 2020, 2021, 2022, and 2023, with the first payment due upon approval of this Lease by the Governor and Executive Council and subsequent payments on or before May 1 of each year.

4.2 Notwithstanding anything to the contrary contained herein, it is understood and agreed that all payments of all sums by DNCR hereunder are contingent upon availability and continued appropriation of State funds, and if for any reason whatsoever, such funds shall be terminated or reduced or otherwise become unavailable, DNCR may terminate this Agreement in whole or in part immediately.

5. BAYROOT's Agreements, Obligations and Reserved Rights:

5.1 BAYROOT agrees that it shall permit the public to use the designated system of Trails and Facility Sites for public recreational purposes only.

5.2 BAYROOT agrees that it shall permit DNCR, at DNCR's own expense, to improve, to maintain, to repair, to use, to patrol, to discontinue, to retire, to abandon and to restore the designated system of Trails and Facility Sites for public recreational purposes only.

5.3 In the event that BAYROOT plans any timber harvesting or other activity that will require the temporary closure or relocation of a trail or facility, BAYROOT shall promptly communicate this to DNCR. At any time, DNCR or BAYROOT may propose to re-locate an existing trail or facility or establish a new trail or facility. The (i) re-location of any Trails and Facility Sites, and/or (ii) the establishment of any new Trails and Facility Sites shall each be subject to the prior approval in writing of BAYROOT and DNCR.

5.4 BAYROOT permits DNCR to cut and remove trees, brush and other obstacles from the Trails to a width of twelve (12) feet. All hazardous trees and brush leaning in the Trails may be cut and removed.

5.5 BAYROOT permits DNCR to perform site preparation, including the cutting and removal of standing trees, for bridge/culvert installation, trailhead parking construction and sanitary facilities construction where permitted.

5.6 BAYROOT permits DNCR to install gates and construct passways through fences and stonewalls.

5.8 BAYROOT agrees to execute the forms necessary for DNCR to obtain all governmental approvals, permits, authorizations, and licenses required under DNCR's obligations.

6. State of New Hampshire's Agreements and Obligations:

6.1 DNCR, at its own expense, shall observe and be in compliance with all Federal, State and Municipal laws and regulations; as such laws and regulations may now be or may hereafter become applicable to Trails and Facility Sites.

6.2 DNCR, unless otherwise mutually agreed upon, shall have the full responsibility of giving notification and/or applying for and obtaining any and all Federal, State or Municipal governmental approvals, permits, authorizations, or licenses relating to DNCR's exercise of rights hereunder, including consents required from DNCR under the Conservation Easement and this Agreement.

DNCR shall not commence or perform any location, relocation, establishment, construction, reconstruction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment or restoration of Trails or Facility Sites on land of BAYROOT until after DNCR has given such notifications and/or applied for and obtained any such governmental approvals, permits, authorizations, or licenses required for such action, and copied same to BAYROOT, if any.

6.3 With respect to DNCR's location, relocation, establishment, construction, reconstruction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment or restoration of Trails and Facility Sites, such activities shall be undertaken only in conformity with the Conservation Easement and any Federal, State and Municipal laws and regulations, and consistent with any approvals, permits, authorizations or licenses issued pursuant thereto.

6.4 With respect to DNCR's location, relocation, establishment, construction, reconstruction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment or restoration of Trails and Facility Sites allowed under the provisions of this Agreement, such activities shall be accomplished to the best management practices (i.e. Best Management Practices for Erosion Control During Trail Maintenance and Construction, published by the New Hampshire Department of Natural and Cultural Resources) for such work.

6.5 DNCR, at its own expense, shall locate, relocate, establish, construct, reconstruct, install, erect, improve, maintain, repair, use, patrol, discontinue, retire, abandon and restore Trails and Facility Sites in a manner that minimizes soil erosion.

6.6 DNCR, at its own expense, may as a portion of a Trail install a stream crossing with a bridge or culvert. Such stream crossing installation shall be at a location and of design and with materials as approved in advance and in writing by BAYROOT and DNCR.

6.7 For timber (permitted to be cut by DNCR), DNCR agrees to pay BAYROOT the current rate for the highest market use of the tree.

6.8 {Reserved.}

6.9 DNCR agrees to close any Trail (or portion thereof), as requested by BAYROOT, that in the sole determination of BAYROOT, the woods operations of BAYROOT or its contractors would make use of any such Trail (or portion thereof) hazardous to the public, within forty-eight (48) hours of receipt of written notice from BAYROOT to DNCR. The parties agree to work together to



relocate the Trail (or portion thereof) so to minimize the interruption of public use of such Trail (or portion thereof).

6.10 DNCR agrees to close any Trail (or portion thereof), as requested by BAYROOT or DNCR, that in the sole determination of either party, is causing unacceptable erosion, or is causing unacceptable sedimentation into a water body or stream, within forty-eight (48) hours of receipt of written notice from BAYROOT or DNCR. The parties agree to work together to mitigate any cause of erosion or sedimentation along a Trail (or portion thereof), and/or to relocate the Trail (or portion thereof) so to minimize the interrupt of public use of such Trail (or portion thereof).

6.11 DNCR, at its own expense, shall regulate the use of Trails and Facility Sites by the public.

6.12 DNCR, at its own expense, shall maintain Trails and Facility Sites in good and usable condition.

6.13 DNCR, at its own expense, shall be responsible for the appearance of all Trails and Facility Sites provided for public use by maintaining the Trails and Facility Sites in a good, clean and orderly condition and manner, and in such manner as not to be objectionable to BAYROOT or DNCR or detract from the aesthetic values of the general area. DNCR agrees to regularly patrol the Trails and Facility Sites, and to pick up and to dispose of all trash and debris resulting from the public's use of the Trails and Facility Sites.

6.14 DNCR agrees that no structure or building will be constructed or erected on the Premises, and that no additional improvements will be made without the prior written consent of DNCR and BAYROOT.

6.15 DNCR agrees that it will not make any strip or waste of any portion of the Premises.

6.16 DNCR, at its own expense, shall be responsible for placing and maintaining necessary trail and facility signs along the Trails and at the Facility Sites so to adequately mark Trails and Facility Sites. All such signs shall be affixed to freestanding posts and shall not be nailed or otherwise attached to live trees.

6.17 DNCR, at its own expense, shall erect signs supplied by BAYROOT that inform the public that private lands are being made available for public use and should be used with respect.

6.18 Any Trail sanitary facilities erected by DNCR shall be at locations approved in writing in advance by BAYROOT and DNCR and shall have approval of the New Hampshire Water Supply and Pollution Control Commission.

6.19 DNCR shall be responsible for maintenance of Trail parking areas.



6.20 Any Trail maps published or otherwise made available through DNCR for the use of the public shall be reviewed and approved by BAYROOT and DNCR. Trail maps shall be kept current with revisions made at least annually.

6.21 In the event that the use of the Trails or Facility Sites as contemplated by this Agreement shall result in any increase in BAYROOT's real estate property taxes, or the assessment of any penalty for removal of the Trails' and/or Facility Sites' areas from Current Use, DNCR shall promptly reimburse BAYROOT for all such costs upon BAYROOT providing proper documentation of such costs.

6.22 Any application of chemicals by DNCR on land of BAYROOT shall be with the prior written approval of DNCR and BAYROOT. DNCR shall hold BAYROOT harmless from and against any and all claims, exactions, penalties, or legal actions resulting from acts by or for DNCR to which this provision applies.

6.23 At the end of this Agreement without any Agreement extension or renewal, DNCR, at its own expense, shall discontinue, retire, abandon, restore and /or stabilize each of the Trails and each of the Facility sites as mutually agreed to with BAYROOT and DNCR. This covenant shall survive the termination of this Agreement.

6.24 DNCR recognizes that decisions and consents required hereunder may require expedited review and action, and shall make reasonable efforts to accommodate all such requests promptly.

#### 7. Liability Provisions; Sovereign Immunity:

7.1 It is expressly understood that the parties intend this Agreement to be subject to the limitations of liability provisions set forth in New Hampshire RSA 212:34 and RSA 508:14.

7.2 Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State. This covenant shall survive the termination of this Agreement.

#### 8. Termination:

8.1 Termination for Cause – In the event that DNCR would: fail to perform any of its obligations hereunder in a timely or satisfactory manner, use or allow the use of the Premises for any purpose or in any other manner except as herein specified, fail to pay the aforesaid annual fee installment when due (whether payment is demanded or not), fail to perform in good faith any of the agreements herein

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set forth, or fail to conform to all the conditions and restrictions herein stated, BAYROOT, its successors or assigns, may at its election terminate or annul this Agreement so far as all further rights of DNCR or the general public hereunder are concerned, and repossess the Premises and hold the Premises free and clear of all claims of DNCR or the general public under this Agreement or otherwise. Written notice of any such determination by BAYROOT shall be served upon DNCR by certified mail, return receipt requested, and sent to the DNCR address as specified below, specifying the nature of the default or breach, with a copy to DNCR. If upon the expiration of fourteen (14) days from the delivery of such notice, the default or breach is not remedied, BAYROOT may terminate this Agreement in whole or in part upon two (2) days notice (the notice of termination period) sent by certified mail, return receipt requested, to the DNCR address as specified below, of such termination, with a copy to DNCR. Upon the expiration of such notice of termination period, this Agreement shall terminate. No failure on the part of BAYROOT, or its successors or assigns, to enforce a forfeiture by DNCR of this Agreement, or to terminate this Agreement for any default or breach by DNCR of any agreement, condition or restriction herein contained, shall be construed as a waiver of the right to enforce a subsequent forfeiture or a subsequent default or breach of the same or any other agreement, condition or restriction herein contained.

8.2 Termination without Cause – This Agreement shall be subject to the right of either party hereto at any time during the term of this Agreement to terminate this Agreement by giving written notice to the other party hereto at least ninety (90) days prior to the effective date of the termination. Any such notice shall be sent by certified mail, return receipt requested, to the address of the party hereto being notified as specified below.

8.3 It is further understood and agreed, that at the termination of this Agreement, any buildings and all fixtures and personal property of DNCR shall be removed from the Premises within ninety (90) day from the date of termination. DNCR hereby agrees that any buildings, fixtures and personal property of DNCR remaining on the Premises after the expiration of said 90 days shall be and become then the property of BAYROOT. BAYROOT, however, reserves the right to require that DNCR shall remove the buildings within the 90 day period if it so demands.

9. Assignment and Sublease:

9.1 DNCR shall not assign, sublet or otherwise transfer any interest in this Agreement, or underlet the Premises or any portions thereof, nor give or surrender the same to any other persons without written consent of BAYROOT and DNCR.

9.2 BAYROOT may assign this Agreement, and this Agreement as so assigned shall be binding on and inure to the benefit of BAYROOT's successors and assigns.

10. Amendment:

10.1 During the term of this Agreement, or any of its extensions or renewals, BAYROOT, and DNCR may negotiate to alter, to close, to relocate, to discontinue and/or to establish new locations of Trails and of Facility Sites, by mutual accord. Such amendment of Exhibit A shall be in writing (with map attached showing the revised locations) and signed by designated agents of each party.

10.2 This Agreement may be modified, waived or discharged only by a written instrument signed by the parties.

11. Special Provisions:

11.1 The State of New Hampshire shall provide BAYROOT with a liability insurance coverage, naming Bayroot LLC and Wagner Forest Management, Ltd., including its members, officers and employees on such policy, said coverage to include two million dollars (\$2,000,000.00), each occurrence, for bodily injury, and fifty thousand dollars (\$50,000.00) property damage, each occurrence. A certificate of liability insurance evidencing such coverage shall be delivered to BAYROOT annually by January 1 of each year.

11.2 BAYROOT reserves the right for itself and its employees, guests, servants, agents, tenants, successors, and assigns to cross, to enter upon, to occupy, to possess and to enjoy the Premises at any and all times in any way in connection with BAYROOT's business and objectives, including but not limited to, the construction, maintenance, use and discontinuance of road, bridges and log yard landings, the taking off and hauling of any trees, forest management activities, or the excavation, removal and hauling of gravel and sand.

11.3 {Reserved.}

11.4 It is also understood and agreed that no Off Highway Recreational Vehicles will be permitted on any Trails during the spring mud season. Appropriate trail closure dates are to be mutually agreed upon by the parties hereto.

11.5 If at any time during the term of this Agreement DNCR shall desire to terminate any portion of the Trails, then it shall do so by notifying BAYROOT by written notice at least thirty (30) days in advance.

12. Notice:

Any notice, demand or communication required or permitted to be given under the terms of this Agreement shall be deemed to have been duly given and made if given by any of the following methods.

a. Deposited in the United States mail in a sealed envelope, postage prepaid, by registered or certified mail, return receipt requested, respectively addressed as follows:

To BAYROOT: Bayroot LLC  
c/o Wagner Forest Management, Ltd.  
Attn: Dan Hudnut  
150 Orford Rd, P.O. Box 160  
Lyme, NH 03768  
Phone 603.795.2002.

To DNCR: NH Department of Natural and Cultural Resources  
Division of Parks and Recreation, Trails Bureau  
Attn.: Chris Gamache, Chief  
172 Pembroke Road,  
Concord, NH 03301  
Phone: 603-271-3254,

To DNCR: NH Department of Natural and Cultural Resources  
Division of Forests and Lands  
Attn.: Susan Francher  
172 Pembroke Road,  
Concord, NH 03301  
Phone: 603-271-4159

or

b. Given in hand to the addressees listed above.

Any such notice shall be deemed effective upon its receipt by the other party.



IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on their respective behalves, each having been thereunto duly authorized, the date and year written above.

**Bayroot LLC:**  
By Wagner Forest Management, Ltd.  
Its Sole Manager

Sharon A. Davis 1/24/2020  
Witness Date

By: [Signature]  
Daniel H. Hudnut  
Its Executive Vice President

STATE OF NEW HAMPSHIRE  
COUNTY OF GRAFTON

On this the 24<sup>th</sup> day of January, 2020, before me, Daniel Hudnut, the undersigned officer, personally appeared Daniel H. Hudnut, who acknowledged himself to be the duly authorized Executive Vice President of Wagner Forest Management, Ltd., acting in its capacity as the duly authorized sole Manager of Bayroot LLC, and that he executed the foregoing instrument for the purposes therein contained by signing the name of Bayroot LLC, by its sole Manager, Wagner Forest Management, Ltd., by himself as Executive Vice President of Wagner Forest Management, Ltd.

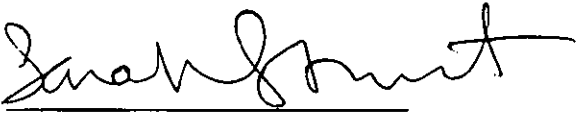
In witness whereof, I hereunto set my hand and official seal.

[Signature]  
Notary Public/Commissioner of Deeds  
My Commission Expires:

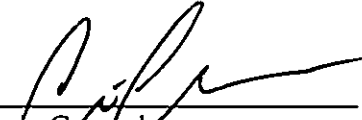
**VICTORIA MAURER, Notary Public**  
My Commission Expires March 13, 2020

**NH Department of Natural and Cultural Resources:**


Lisa Connell 2-3-20  
Witness Date

By:   
Sarah L. Stewart  
Commissioner

Margaret Morrison 1/30/2020  
Witness Date

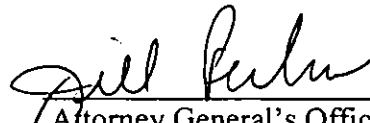
By:   
Chris Gamache  
Chief, Bureau of Trails

Robert Trombley 1/31/2020  
Witness Date

By:   
Susan Francher, Administrator  
Planning and Community Forestry

Approved as form, substance and execution:

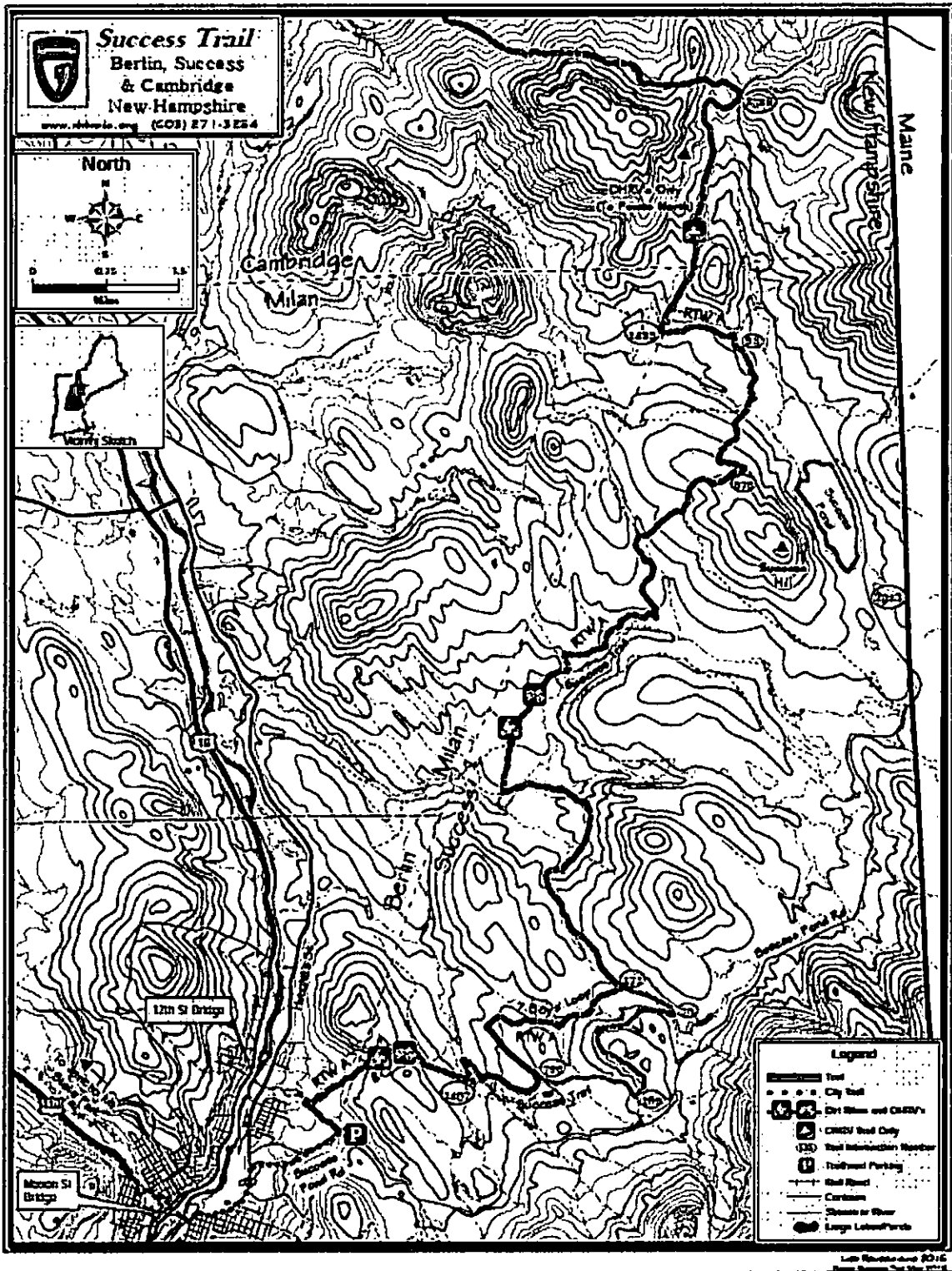
OFFICE OF THE ATTORNEY GENERAL

  
Attorney General's Office  
Date: 3/8/20

Approved by Governor and Council  
at the \_\_\_\_\_ meeting as  
Item # \_\_\_\_\_.

# EXHIBIT A

## Location Map of Trails and Facility Sites Upon Bayroot LLC Crown Tree Farm Lands in Success, NH



**BAYROOT LLC  
CONSENT RESOLUTIONS OF MANAGER**

The undersigned, Wagner Forest Management, Ltd., a New Hampshire corporation which is the sole manager (the "Manager") of Bayroot LLC, a Delaware limited liability company, does hereby consent to the taking of the following actions, such actions to be deemed taken effective as of February 24, 2020:

**RESOLVED:** That Daniel H. Hudnut in his capacity as Executive Vice President of the Manager is duly authorized to enter into contracts on behalf of Bayroot LLC, a limited liability company (the "Company") with the Department of Natural and Cultural Resources, State of New Hampshire – Bureau of Trails, and further is authorized to execute any documents which may in his judgment be desirable or necessary to affect the purpose of this vote; and further

**RESOLVED:** That any and all actions heretofore or hereafter taken by such officer or officers of the Manager on behalf of the Company within the meaning of the foregoing resolutions be, and hereby are, ratified and confirmed as the acts and deeds of the Company.

Delivery of an executed signature page to this consent by facsimile or in an electronic (i.e. "pdf" or "tif" ) format shall be effective as delivery of a manually executed copy of this consent.

**WAGNER FOREST MANAGEMENT, LTD.,  
As Manager**

By: Thomas J. Colgan  
Thomas J. Colgan  
President